REMARKS

Claims 1 and 7 have been amended to incorporate the subject matter of Claims 14 and 16, specifying that the composition is once ground (and achieves such a small particle size), which have been canceled, without prejudice. Particle size is critical because spreadability is determined by the particle size (which Wong et al. '645 recognized but failed to achieve to the same degree as the present invention).

The Present Invention

The present invention is directed to a superior nut butter, with a creamy characteristic, made in a form which is very spreadable and that takes less force to spread with a knife. The claimed composition has a high percentage of medium sized particles and a spreadability of about 4.915 kg to about 5.215 kg. As shown in Examples 1-8 in the Specification (beginning on p. 14, line 19 +), the claimed composition unexpectedly displays superior spreadability when compared to conventional like compositions.

Independent claim 1, as amended, describes a nut butter or nut spread composition comprising

(i) a nut ingredient,

(ii) from about 0-10% seasonings,

(iii) from about 0.5-2.5% stabilizer,

(iv) from about 0-1% emulsifier and

(v) from about 0-60% bulking agent, and

the particle size distribution of said nut butter or nut spread composition having a lower percentage of fine and coarse sized particles and a higher percentage of medium sized particles such that at least 90% of the particles are smaller than about 40 microns, at least 50% of the particles are smaller than about 10 microns, at least 10% of the particles are smaller than about 2 microns, and 1.4% of the particles are larger than 58.7 microns ,

having a span from about 4.16 to about 6.0; a Brookfield viscosity from about 6,000 to about 14,000 centipoise taken at a temperature of 85° C after 60 seconds at 20 rpm

with a spindle D, heliopath; and a spreadability of from about 4.915 kg to about 5.215 kg;
and where the composition is a once ground composition.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the type of nut ingredient and the addition of oil *where defatted nuts are used*.

Independent claim 7 is directed to a reduced fat nut spread comprising

(i) a nut ingredient wherein the nut ingredient is a peanut ingredient,

(ii) from about 0-10% seasonings,

(iii) from about 0.3-2% stabilizer, (iv) from about 0-1% emulsifier and (v) from about 10-60% bulking agent and the particle size distribution of said nut spread composition having a lower percentage of fine and coarse sized particles and a higher percentage of medium sized particles such that at least 90% of the particles are smaller than about 40 microns, at least 50% of the particles are smaller than about 10 microns, at least 10% of the particles are smaller than about 2 microns and 1.4% of the particles are larger than 58.7 microns wherein the composition has a spreadability of about 4.000 kg to about 5.300 kg; a Brookfield viscosity from about 6,000 to about 14,000 centipoise taken at a temperature of 85° C after 60 seconds at 20 rpm with a spindle D, heliopath; and
a span from about 2.5 to about 6.0;
and the composition is a once ground composition.

The invention of claim 7 is further defined by the dependent claims which claim, among other things, the type of nut ingredient, the addition of oil *where defatted nuts are used,* and a spreadability from about 4.915 kilograms to about 5.215 kilograms.

The Nut Butter and Spread According to the Present Invention

Is Not Obvious Under 35 USC §103

Claims 1, 3, 4, 5, 9-10, (claim 11 had been previously canceled), 12, 14, and 18-20 (claims 17- 19 had been previously canceled) were rejected under 35 USC §103 as being unpatentable over **Wong** et al., U.S. Patent No. 5,693,357 (hereinafter '357) in view of **Wong** et al., U.S. Patent No. 5,885,645 (hereinafter '645) and further in view of **Walling** '919 and further in view of **Meade**, U.S. Patent No. 6,010,737 (hereinafter '737). Claims 7, 12 and 16 have been rejected under 35 USC §103 as being unpatentable over **Wong** '357 in view of **Wong** '645, as applied above, and further in view of **Meade** '737.

Regarding Wong '357, the Office Action admits that Claims 1, 7 and 12 differ in the limitation that 1.4 % of the particles are larger than 58.7 microns and 10 % are smaller than 2 microns, as well as in the limitation of the particular spreadability. To cure the deficiencies, Wong '645 is cited to support existence of chunky peanut butters and for the proposition that nut spreadability is determined by particle size. *While Applicants do not dispute the background stated in Wong '645, the proposition is, at most, merely an invitation to invent, rather than any specific achievement of a unique nut spread having particular advantageous characteristics as was done in the present invention.*

In the rejection as to both the independent claims 1 and 7, the Examiner mentions, in summary, that the '737 reference discloses viscosities within the claimed range and it would be obvious to use/want a viscosity as disclosed by the '737 reference in the compositions described in the '357 reference. Furthermore, the Examiner continues to believe it is obvious to vary particle sizes to obtain a particular spreadability.

While Applicants respectfully traverse, in the interest of progressing the passing of this application to issuance without delay, Claims 1 and 7 have been amended to incorporate the subject matter of claims 14 and 16, respectively. *Note, Claims 11, 17-19 had been canceled by previous amendment.*

None of the important and critical limitations set forth in the presently claimed invention, for example as they apply to particle size distribution, are even remotely described in the '357 and '645 reference. The '357 reference merely discloses a nut paste having a particular monomodial particle size distribution. The monomodial nut butters and spreads of the '357 reference typically comprise from about 50% to 100% of a nut paste with water insoluble solids comprising a particle size of less than about 21.6 microns. The '357 reference does not, even remotely, teach, suggest or describe any of the important and critical limitations set forth in independent claims 1 and 7. Particularly, there is no teaching whatsoever in the '357 reference that even remotely suggests the spreadability of the presently claimed compositions. Moreover, nothing in the '357 reference even remotely suggests the particle size distribution set forth in independent claims 1 and 7, and based on the formula in Example 5, the paste in the '357 reference will not have the span of the compositions claimed in this invention.

The deficiencies in Wong '357 are not cured by Wong '645, since it merely discloses separately milled nut solids and particular water soluble solids used to reduce stickiness and improve flavor intensity of a nut spread. Nothing in Wong '645 even remotely describes any of the limitations set forth in the presently claimed invention. *In fact, Wong '645 teaches away from the present invention by requiring a viscosity of about 2,000 centipose or less (Abstract, Claim 1), whereas the present invention is directed to much more viscous nut spreads. As such, the spreadability of Wong '645 is different. The invention should be viewed as a whole rather than picking and choosing elements from a* ***multitude*** *of references.* Moreover, the combination of references does not suggest the span of the composition as presently claimed.

Furthermore, Meade '737 reference merely describes nut spreads having reduced fat and reduced calories *by means of using* from about 4 to about 18% of a low or no calorie triacyl-glycerol oil *to replace the natural nut oil.* In contrast, Claim 4 specifically requires native nut oil.

Applicants respectfully submit that the nut butter of Walling et al. does not have the characteristics of the nut butter obtained through the one-step process of the present invention owing, in part, to ***differences in particle size distribution.*** Walling specifies 80 % nut solids having a particle size of less than 18 microns, which is a completely different particle size distribution from the presently claims at least 10 % smaller than about 2 microns, at least 50 % smaller than 10 microns, at least 90 % smaller than 40 microns, and 1.4 % larger than 58.7 microns. Walling requires a span of greater than 2.5 to no more than 5, whereas the present invention goes from about 4.16 to as high as 6. The fact that some particles of Walling may be the same **size** as some particles of the nut butter of the present invention does not render the **particle size distribution** and other properties the same.

The combination of references does not suggest that at least 10% of the particles present within the composition are smaller than about 2 microns and do not suggest that the composition is one which is a once ground composition. The important particle size distribution of the composition of the present invention is not suggested by the references. In view of the above, all of the important and critical limitations set forth in the presently claimed invention are not found in the combination of references.

In light of the above amendments and remarks, it is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

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